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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/639,618	08/13/2003	Michael D. Mayfield	22870.00	7411

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EXAMINER

WALLS, DIONNE A

ART UNIT	PAPER NUMBER
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1731

DATE MAILED: 05/04/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/639,618

Applicant(s)

MAYFIELD ET AL.

Examiner

Dionne A. Walls

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 14 January 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-6,10 and 12-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 19 and 20 is/are allowed.
- 6) ☒ Claim(s) 1,3-6,10,12-18 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Specification

1. The disclosure is objected to because of the following informalities: All occurrences of the word "inflammable" should be replaced with the word "nonflammable", as this word denotes materials, such as sand, which do not ignite/burn. This term is consistent with the intent of the disclosure, and, technically, seems more correct that the term "non-inflammable".

Appropriate correction is requested.

Claim Objections

2. Claims 1, 12 and 19 are objected to because of the following informalities: All occurrences of the word "inflammable" should be replaced with the word "nonflammable", as this word denotes materials, such as sand, which do not ignite/burn. This term is consistent with the intent of the disclosure, and, technically, seems more correct that the term "non-inflammable".

Appropriate correction is requested.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

4. Claims 15-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irmischer et al (US. Pat. No. 4,571,250).

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Irmscher et al discloses an ash container 10 having a hemispherical, dome-shaped cover 24, with an aperture 48 therein, said container including a base 11 encompassing a hollow cylindrical ash receiving receptacle 19 (corresponding to the claimed "tray"). The base 11 is attached to the cover 24 via hinge 25. The manner in which the cover 24 is positioned over the base 11 enables any cigarette butts or ashes disposed in the receptacle 19 to be hidden from view. While Irmscher et al may not specifically state that there is a lock attached to the cover and the lower section, this limitation is not deemed to patentably distinguish the claims from Imscher et al since it would have been obvious to one having ordinary skill in the art at the time of the invention to include a locking means, such as a conventional padlock or recessed lock, to prevent the inner receptacle from being stolen or taken.

Regarding claims 16-18, it would have been obvious to one having ordinary skill in the art at the time of the invention to have arrived upon the claimed sizes for the aperture 48 of the cover 24 of the ash container 10, after optimizing the size of the hose 45 – which fits through the aperture - to ensure effective vacuuming of the ashes in the container.

5. Claims 1, 3-6, 10, 12-14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Irmscher et al (US. Pat. No. 4,571,250) in view of Kesinger et al (US. Pat. No. 3,802,560).

Irmscher et al discloses nearly all that is recited in the claims (see rejection for claim 15), except it may not teach a nonflammable material at least partially filling the receptacle (corresponding to the claimed "tray"). However, it would have been obvious

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to one having ordinary skill in the art at the time of the invention to have added a nonflammable material, such as sand, to the tray since, as explained in Kesinger et al, ash trays of the sand receptacle type are widely used because sand advantageously snuffs out cigar/cigarette butts almost immediately upon contact (see col. 1, lines 10-13).

Regarding claims 13, the receptacle 19 is capable of serving as a trashcan. Therefore, the limitations of claim 13 is met since the base 11 is adapted to be attached to the receptacle 19.

Regarding claim 14, it would have been obvious to one having ordinary skill in the art at the time of the invention to have secure the receptacle 19 to the base 11 with a chain in order to secure it so that it will not be displaced when the ash can is transported to other locations.

Allowable Subject Matter

6. Claims 19-20 are allowed.

Response to Arguments

7. Applicant's arguments with respect to the pending claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

8. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

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9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

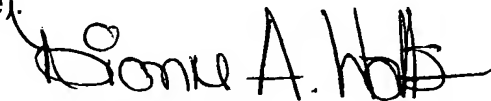
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dionne A. Walls whose telephone number is (571) 272-1195. The examiner can normally be reached on Mon-Fri, 7AM - 4:30PM (Every other Friday off).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Steven P. Griffin can be reached on (571) 272-1189. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Dionne A. Walls". The signature is stylized with a large initial "D" and a cursive "Walls".

Dionne A. Walls
Primary Examiner
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May 2, 2005